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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/623,354

07/18/2003

William David Dunfee

DCS-9142

5037

34500

7590

06/05/2006

DADE BEHRING INC.
LEGAL DEPARTMENT
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EXAMINER

CROSS, LATOYA I

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/623,354	Applicant(s) DUNFEE, WILLIAM DAVID	
	Examiner LaToya C. Younger	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 13, 2006 has been entered.

Withdrawal of Rejections from Previous Office Action

- The anticipation rejections over Fose et al and Zelinka are withdrawn in view of Applicants' amendment to positively recite a sample tube closed by a closure.

Claim Observations

Claim 1 recites, "a probe depending from said drive". Since the claim recites two drives, it is unclear as to which drive the probe depends from. It is suggested that Applicants clarify the claim by changing "said drive" to "said vertical drive".

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 4,951,513 to Koike.

Koike teaches an automatic preparation apparatus for preparing samples by performing filtration, dilution and reaction steps. The apparatus comprises test tubes (16, 18, 20, 24, 26, 28) on turntable (22). A probe robot (12) is provided with a probe needle (38). Robot (12) is driven by a horizontal drive for movement from left to right (arrow 40) and a vertical drive for movement in the vertical direction (arrow 42). At col. 8, lines 34-68, Koike teaches that the vertical drive moves the probe needle into the tube for sampling liquid (steps 3 and 4) as recited in claim 2. The reference further teaches dispensing liquid into the sample injection port (102) or sealing chamber (104). The apparatus also comprises a microsyringe pump (64) for aspirating and discharging a predetermined amount of liquid. A cleaning mechanism (120) is intended for cleaning probe needle (38). Cleaning liquid flows via openings (120a, 120b), which communicate with a cleaning liquid supply and discharge system (col. 6, lines 42-47).

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koike in view of Suovaniemi.

The disclosure of Koike is described above. The Koike reference fails to teach a locking mechanism.

Suovaniemi teaches a pipette assembly with a locking mechanism. When the pipette is in aspirating or dispensing position, the locking mechanism locks that position to assure that the pipette is not inadvertently adjusted from its position. It would have been obvious to one of ordinary skill in the

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art to incorporate a locking mechanism into the sampling probe of Koike to avoid any mishaps in aspirating or dispensing the sample fluid. Such would prevent cross contamination of the sample and reagents and in doing so, provide more accurate analysis results.

Response to Arguments

6. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya C. Younger whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Thursday 10:30 a.m. - 8:00 p.m. and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lcy


YELENA GAKH
PRIMARY EXAMINER